

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN ALLEN LACOSSE, II,

Defendant-Appellant.

UNPUBLISHED

September 16, 2014

No. 310987

Livingston Circuit Court

LC No. 12-020411-FH

Before: FITZGERALD, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant pleaded guilty to two counts of failure to report, or stop at the scene of, an accident resulting in serious impairment or death, MCL 257.617. For these offenses, the circuit court sentenced defendant, as a fourth habitual offender, MCL 769.12, to concurrent terms of 76 months to 20 years' imprisonment. He now challenges the accuracy of his presentence investigation report (PSIR) and the scoring of two offense variables (OVs). The court corrected those errors it perceived in the PSIR and it does not appear that any erroneous information influenced defendant's sentences. Moreover, the underlying accident was part of the sentencing offenses and could be relied upon in scoring defendant's offense variables. We therefore affirm.

I. BACKGROUND

Defendant's plea-based convictions arose from his decision to drink and drive. After consuming alcohol at a party, defendant drove toward his home during the early morning hours of October 30, 2011, in his pickup truck. While travelling on Center Road in Howell, where the speed limit is 55 miles an hour, defendant struck two other party guests who were walking home. Defendant claimed that he thought he struck a parked vehicle. Defendant chose not to stop at the scene or file a police report despite knowing that he was involved in some sort of accident. One victim was found laying face down in a ditch and died at the scene; the other suffered a concussion, as well as fractures to her pelvis and vertebrae. Shortly after the collision, defendant drove into a ditch on Golf Club Road and contacted his girlfriend to assist him.

II. ACCURACY OF THE PSIR

Defendant contends that he was sentenced based on inaccurate information included in his PSIR. The PSIR indicates that defendant's parents were involved in covering up his offense, a claim which he describes as false. Defendant also challenges the omission from his PSIR of Livingston County Sheriff's Deputy Sell's description of the victims' negligence in causing the accident. Specifically, defendant wanted included in his PSIR that the victims were wearing dark clothing and walking in the lane of traffic in violation of law. Defendant further notes that he was driving well under the speed limit and had to swerve to avoid an oncoming vehicle when he struck the victims.

We review for an abuse of discretion a sentencing court's response to challenges regarding information set forth in a PSIR. *People v Uphaus (On Remand)*, 278 Mich App 174, 181; 748 NW2d 899 (2008). "Critical decisions are made by the Department of Corrections regarding a defendant's status based on the information contained in the presentence investigation report." *People v Norman*, 148 Mich App 273, 275; 384 NW2d 147 (1986). Accordingly, the PSIR "should accurately reflect any determination the sentencing judge has made concerning the accuracy or relevancy of the information contained in the report." *Id.* When a defendant challenges the accuracy of the report:

The court may determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information. Should the court choose the last option, it must clearly indicate that it did not consider the alleged inaccuracy in determining the sentence. If the court finds the challenged information inaccurate or irrelevant, it must strike that information from the PSIR before sending the report to the Department of Corrections. [*People v Spanke*, 254 Mich App 642, 648-649; 658 NW2d 504 (2003) (citations omitted).]

The circuit court addressed defendant's challenge to the mention of his parents' role in covering up the offense by including a note that defendant denied that statement. While the circuit court did not specifically state that it omitted this factor from its sentencing consideration, this information certainly was not relevant. Accordingly, we find harmless any error in retaining this statement within the PSIR.

The circuit court also considered and denied defendant's request to add more details from Deputy Sell's description of the collision. We discern no abuse of discretion in the court's decision. The PSIR already included information regarding the accident that was beneficial to defendant. The agent's description of the offense specifically cited the police report, and noted that the collision occurred after dark while the victims walked in the roadway. Additional facts were unnecessary to allow the court to accurately assess the sentencing variables. Accordingly, defendant is not entitled to a remand to correct the PSIR.

II. SCORING OF THE SENTENCING GUIDELINES

Defendant also challenges the circuit court's scoring of OV 3 and OV 9. When reviewing a circuit court's scoring decision, the court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. *People v Hardy*, 494

Mich 430, 438; 835 NW2d 340 (2013). “Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made.” *People v McDade*, 301 Mich App 343, 356; 836 NW2d 266 (2013). “Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo.” *Hardy*, 494 Mich at 438. “Offense variables must be scored giving consideration to the sentencing offense alone, unless otherwise provided in the particular variable.” *People v McGraw*, 484 Mich 120, 133; 771 NW2d 655 (2009).

MCL 777.33 provides for the scoring of OV 3, in relevant part, as follows:

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was killed..... 100 points
- (b) A victim was killed..... 50 points
- (c) Life threatening or permanent incapacitating injury occurred to a victim..... 25 points
- (d) Bodily injury requiring medical treatment occurred to a victim..... 10 points
- (e) Bodily injury not requiring medical treatment occurred to a victim..... 5 points
- (f) No physical injury occurred to a victim..... 0 points

(2) All of the following apply to scoring offense variable 3:

* * *

(b) Score 100 points if death results from the commission of a crime and homicide is not the sentencing offense.

(c) Score 50 points if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle . . . and any of the following apply:

(i) The offender was under the influence of or visibly impaired by the use of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance. . . .

The scoring of OV 9 is governed by MCL 777.39, which provides, in relevant part:

(1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

* * *

(c) There were 2 to 9 victims who were placed in danger of physical injury or death, or 4 to 19 victims who were placed in danger of property loss..... 10 points

(d) There were fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims who were placed in danger of property loss..... 0 points

(2) All of the following apply to scoring offense variable 9:

(a) Count each person who was placed in danger of physical injury or loss of life or property as a victim. . . .

In relation to these variables, defendant contends that the sentencing offenses—the failure to stop and report the accident—did not cause the victims’ death and injury. Rather, the accident itself caused the death and injury. As defendant was not convicted of a crime related to the actual accident, he contends that he could not be assessed points for either of these variables.

However, defendant’s interpretation of the statute under which he was convicted is not accurate. The judgment of sentence does not indicate under which subsection of MCL 257.617 defendant was convicted. MCL 257.617(3) provides the punishment for a failure to stop or report an accident “following an accident caused by that individual.” At the plea hearing, defendant admitted that his car struck something on the night in question. Accordingly, contrary to defendant’s assertion, the underlying accident caused by defendant is part of the sentencing offense.¹

Defendant’s score of 100 points for OV 3 fits squarely within the parameters of the statute. A victim was killed as required by MCL 777.33(1)(a). One hundred points were permitted because homicide was not the sentencing offense. MCL 777.333(2)(b). And the court was required to select the relevant option with the highest number of points, precluding consideration of a lower score based on drunken driving. MCL 777.33(1); see also MCL 777.33(2)(c). Similarly, as the accident was part of the sentencing offenses, the circuit court’s

¹ The felony information cites subsection (2) of the statute, which does not reference an accident caused by the defendant. However, no subsection was cited at the plea hearing or in the judgment of sentence and defendant’s admission to causing the accident places his conduct within subsection (3).

scoring of OV 9 was proper. Two victims were placed in danger of injury or death during the accident, warranting a score of 10 points. The court committed no error and defendant is not entitled to resentencing.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Elizabeth L. Gleicher

/s/ Amy Ronayne Krause